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ABSTRACT

Outcomes of the Bakke decision and the role of the state in developing an effective post-Bakke agenda are addressed. While the Supreme Court rejected the doctrine of complete racial neutrality in admissions decisions, there is ambiguity in the decision that could be used to rationalize complacency and justification of the status quo, doing away with quotas and two-tracks and submitting nothing in their place, or weakening programs designed to support minority students with potential for professional and graduate work. Advantages of the decision include directing attention to the issue of underrepresentation of minorities in higher education and in responsible positions in American society. It is suggested that state boards, commissions, or departments of higher education have played or have the capacity for playing significant roles in expansion of access, including providing guidance in areas related to access such as admissions standards and student aid. An agenda for state higher or postsecondary education should include the following: disseminate accurate information about the Bakke decision to policy-makers, identify and disseminate admissions models designed to increase enrollment of underrepresented minorities at graduate and professional levels within the Bakke guidelines; encourage institutions to develop their own plans for overcoming underrepresentation; and conduct human resources studies that identify specific community as well as aggregate state needs in critical human service areas. An agenda for the legislative and executive branches of state government could include: issuing a formal resolution and/or executive order reaffirming the state's commitment to affirmative action and to overcoming underrepresentation both in educational opportunity and in providing human services. (SW)

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THE STATE ROLE -- BEYOND BAKKE

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THE STATE ROLE -- BEYOND BAKKE

I Statements from Bundy:

-- The opinion constitutes a "reasonably clear and hopeful guide to action for all those who share the central concern...for the survival and reinforcement of the continuing effort to make room for qualified members of racial minorities on the staircase to the professions".

-- The Supreme Court rejected the doctrine of complete racial neutrality.

-- But the quest for diversity as such is not enough to give the cause of affirmative action the moral impetus it still needs.

-- Justice Powell: "The state certainly has a legitimate and substantial interest in ameliorating, or eliminating when feasible, the disabling effect of identified discrimination".

-- The great hope in the complex split decision of the Supreme Court is that it leaves the way open for a far better result -- one in which continued and energetic affirmative action for racial minorities is combined with other individuals and their own claims, all in the framework of a renewed recognition that selective admission requires judgment as well as computation.

-- Need to work for a diversity of qualified students as wide as the variety of Americans.

II. Where the Decision Leaves Us:

1. Dangers -- Because it is ambiguous and seems to offer all things to all people it could be used as a rationalization for:
   a. Complacency and justification of the status quo.
   b. Doing away with "quotas" and "two-tracks" and submitting nothing in their place.

c. Abandoning or weakening programs essential to creating conditions for providing opportunities essential to preparation, encouragement and support of minority students with potential for professional and graduate development and followed by services to their wider communities.

But

2. Advantages

a. Has shifted the issue back from the legal arena to the policy arena.

b. Makes it possible to concentrate on the central issue: under-representation of minorities not just in higher education but in responsible positions in American society and the implications of this for postsecondary education and society as a whole.

3. Our central state and national objective should be full and equitable representation of minorities in professional and graduate programs and in the professions themselves.

a. If this goal of American society is to be reached it must be addressed by institutions, the states and the federal government working collaboratively -- because of its magnitude it cannot be achieved by one sector alone.

b. To be sure the focus of admissions decisions is and should be at the institutional level, but the context in which such decisions are made includes the states and the nation.

III. What I would like to do in the short time available is to concentrate particularly on the state role -- the state in this sense to include executive and legislative branches of state government and state higher or postsecondary education agencies.

1. Constitutionally and historically, the primary legal and financial

responsibility for meeting the educational needs of citizens rests with the states. Over the past two decades the states have played the major role in providing and extending access to higher education to progressively larger numbers of students. State master plans of the 1960s and 70s were blueprints for increasing access and have led to increases in numbers of programs and institutions to meet postsecondary educational needs. While we are a long way from achieving our goals and removing all barriers real progress has been made in enlarging educational opportunity.

2. Since the Higher Education Act of 1965 the federal government has augmented state efforts through student aid most recently and massively through the Basic Educational Opportunity Grant program -- but also with special institutional support programs for the disadvantaged (Upward Bound, Talent Search and Special Services). But the task of relating factors involving access including student aid, various forms of institutional support and articulation between elementary/secondary and postsecondary education rests with the states working in cooperation with institutions.
3. State boards, commissions or departments of higher education have played or have the capacity for playing significant roles in expansion of access:
   a. Have been charged with developing or guiding expansion in enrollments and a diversified system of higher education providing multiple types of opportunity.
   b. Specifically charged with identifying public needs, recommending state responses to these needs and planning for their implementation.
   c. Are usually responsible for reviewing or approving new programs and institutions.
   d. Are frequently called on for policy analysis and recommendations in areas related to access including undergraduate admissions standards and student aid -- witness the broad and effective student

aid programs in New York, Pennsylvania and New Jersey.

e. Not all but some are required to monitor statewide enrollments, participation rates, ethnic distribution, and persistence and completion rates.

f. But most of this attention to date has been at the undergraduate level -- and although many universities have taken steps to increase representation of disadvantaged groups in graduate and professional post-baccalaureate education, few states have comprehensive strategies or mechanisms for evaluating progress.

IV. While education may well be the key to the state's responsibility, that responsibility goes considerably beyond education as such and lies in assuring its citizens access to critical human services such as health, legal assistance, more adequate housing, social work, and public service -- and it is the public's need for these that has provided the primary rationale for expansion and public support of graduate and professional programs.

1. Progress in improving access of the traditionally under-served communities to human services has been even slower than progress in equalizing access to graduate and professional programs. Maldistribution of services to rural areas and inner-city -- to the poor, ghetto and barrio dwellers, etc.

2. In advanced professional areas educational opportunity has usually been rationed in the light of public needs rather than on the basis of student demand. As supply meets general level of demand the question of distribution of services becomes the primary issue.

3. Thus, the most critical need is a public and institutional policy framework that emphasizes societal needs and education of those individuals most likely to contribute to meeting those needs. Pat Callan, from California, has pointed out that "Our most fundamental and urgent

problem is equity in the distribution of services, not equalizing the professional pathways to affluence, or even, as the Bakke decision implies, diversification of our student bodies" as desirable as these may also be.

V. At this point it becomes critical to develop an effective post-Bakke agenda designed to overcome underrepresentation and to do so on the state as well as institutional and federal levels. What are or might be the components of such an agenda to be developed cooperatively by the states and institutions? Three general factors that condition these agendas:

1. Recapturing the initiative for new efforts within the guideposts established by the court -- overcoming the psychological effects of the Bakke case which for a time cast a shadow or placed under question all affirmative action programs.
2. Developing strategies that take into account the complexities of the educational, political and fiscal environment of the 80s -- complexities which could unintentionally undermine rather than strengthen initiatives towards overcoming underrepresentation --

   Tax limitations -- Proposition 13.

   Limited fiscal resources, accountability and reallocation of resources.

   Enrollment changes and decline and competition for students
3. The first level of responsibility for admissions programs and policies as also for reinforcing programs should lie with the colleges and universities themselves. These are not areas in which the governor, the legislature or the state higher education agencies should be directly involved (there is danger of enacting into law policies that must be flexible). However, the state can and should help create

conditions or a framework conducive to development of effective programs at institutional levels.

4. An agenda for state higher or postsecondary education agencies should include the following:

   a. Disseminate accurate information about Bakke decision to policy makers.

   b. Identification and dissemination of admissions models which have succeeded or give promise of succeeding in increasing enrollment of under-represented minorities at graduate and professional levels within the Bakke guidelines.

   c. Encourage or require institutions to develop their own plans for overcoming under-representation.

   d. Conduct human resources studies that identify specific community as well as aggregate state needs in critical human service areas.

   e. Explore institutional and other factors that help determine student's decisions in relation to location of practice or professional involvement.

   f. Monitor more effectively progress in increasing minority representation in graduate and professional schools.

   g. More adequate evaluation of programs designed to increase the number of eligible minority students by increasing their representation at the undergraduate level and in appropriate programs -- student aid, outreach, information, counseling, etc.

   h. Utilization of the goal of overcoming under-representation as a critical factor in program and budget review to assure that decisions particularly in relation to retrenchment are sensitive to the critical importance of adequate support for effective programs.

i. If necessary, realign priorities to insure that overcoming under-representation remains or becomes a central and explicit goal in statewide planning and its implementation.

5. An agenda for the legislative and executive branches of state government could include:

a. Through formal resolution and/or executive order reaffirmation of the state's commitment to affirmative action and overcoming under-representation both in educational opportunity and in providing human services.

b. Request through the state higher education agency or directly from institutions progress reports from each institution on attainment of affirmative action goals. These reports should include:

(1) Analysis of student composition with special emphasis on graduate and professional programs. This analysis should also include retention rates, program distribution and comparison with ethnic, sex and economic distribution of graduating high school students in the state [cf. California].

(2) Evidence that admissions policies take into account human services needs of underserved communities and that efforts are being made to seek out qualified students most likely to address these needs.

(3) Evidence that particular admissions criteria are sensitive to unmet human services needs.

c. Commitment in the budgetary review, recommendation and appropriations process to high-priority for programs addressing the issues of under-representation and affirmative action in human service areas.

d. Encouraging college and university involvement in early outreach programs to prepare minority students for college work.

e. Requiring that overall state planning for postsecondary education, address the issue of under-representation and include strategies for overcoming it.

VI. We are at a critical juncture in affirmative action and overcoming under-representation. It is of paramount importance that the initiative be regained and further progress take place. If this is to happen it is imperative that states, institutions and the federal government work and talk together within the guidelines provided by the Bakke decision to see that it is done.

Only under such circumstances will (to quote from Justice Powell) "the states' legitimate and substantial interest in ameliorating or eliminating the disabling effects of identified discrimination" take place!